

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 204 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements ? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

RAMJIBHAI JIWANBHAI PATEL

Versus

COMPETENT AUTHORITY & ADDL. COLLECTOR U.L.C.

Appearance:

MR MI HAVA for Petitioner

MS VK PAREKH, ASSTT. GOVERNMENT PLEADER for the Respondent.

CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 18/03/97

ORAL JUDGEMENT

The petitioner is the owner of land bearing

survey Nos.116, 65/2, 69/2 and 5/1 situated in village Pandesara district Surat. From the record it appears that the total holding of the petitioner is about 36,413 square metres. Consequently, the petitioner filed statement under Section 6 (1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief). The Competent Authority while deciding the petitioner's form declared 34,930 square metres of land as excess holding vide order dated 30.10.1985 at Annexure-A. Vide subsequent order dated 18.4.1987, the same was rectified by suo motu proceedings and a further deduction of 13,450 square metres of land was given holding that the land to this extent was acquired by Housing Board. Aggrieved by these above orders, the petitioner filed an appeal before the Tribunal. However, the same came to be dismissed vide order dated 30.11.1996. Aggrieved by this order, the petitioner has filed this petition.

2. Mr.Hava for the petitioner has vehemently argued that the order passed by the Competent Authority at Annexure-A has been passed in violation of principles of natural justice as it has been passed in absence of the petitioner without giving any opportunity of hearing. Mr.Hava has also invited my attention to the factual aspect which, if considered on merits, would affect the merits of the impugned orders.

3. It cannot be gainsaid that the Competent Authority while dealing with the questions arising under the Act is discharging quasi-judicial functions and is required to follow principles of natural justice. In this case it is abundantly clear from the order dated 30.10.1985 at Annexure-A passed by the Competent Authority that the same has been passed ex parte in absence of the petitioner, meaning thereby that the petitioner did not have an opportunity of representing his case on merits before the authorities. Before deciding any proceedings, the authority must issue notice and satisfy about valid and legal service upon other side. In this case, the Competent Authority proceeded on presumption that the process is legally served as the cover bears the endorsement of refusal. It is needless to say that such presumption is always rebuttal presumption and the petitioner has categorically denied. Thus, in absence of any other cogent evidence, presumption shall be deemed to have been rebutted. Consequently, the authority shall be deemed to have proceeded without serving notice upon the petitioner. Thus, on the face of it, the impugned order dated 30.10.1985 at Annexure-A is illegal, arbitrary and in violation of the principles of natural justice.

4. Apart from these facts, as held by this court in its judgment in the case of SHIVLAL THAKERSHI GOTECHA v. COMPETENT AUTHORITY reported in 1987 (1) 28 (1) Gujarat Law Reporter at page 267, Competent Authority or Appellate Authority under the Act is always obliged to determine matters on merits after taking into consideration all the relevant factors laid down by law. In other words, while deciding an application under the Act, the Competent Authority or the Appellate authority is required to go into all the relevant facts and materials placed before it and even which may emerge depending upon the facts and circumstances of individual case. The proceedings before the authority is a statutory inquiry. Therefore, without taking recourse of adversary system, the authority is bound to hold inquisitorial inquiry, collect data and process it in accordance with law. The authority cannot refuse to do so on the ground that no material has been placed before it by the parties or that the parties had failed to appear and assist. Mr. Hava for the petitioner has invited by attention to some of the documents being revenue record and record of Urban Development Authority to the effect that a road is passing through the land bearing survey No.116; that a culvert is situated on the eastern side just abutting the land bearing survey No.65/2 and that a canal is abutting on the southern side and a road abutting on the eastern side of the land bearing survey No.69/2. If these are the admitted facts on record in accordance with the revenue record, then, in my view, the Competent Authority should have considered on merits while considering the question of excess land. As held by this court in the case of SHIVLAL THAKERSHI GOTECHA (supra), it was the duty of the Competent Authority while holding a statutory inquiry to make an inquisitorial inquiry and determine the question by collecting relevant evidence even though such material has not been placed by the parties on record. The impugned order passed by the Tribunal shows that, though such contentions were raised, the Tribunal has not at all considered and simpliciter upheld the order passed by the Competent Authority.

5. Ms.V.K.Parekh, learned A.G.P. for the State of Gujarat submits that, after the impugned orders, the respondent has taken appropriate steps under Section 10 (1) and Section 10 (3) of the Act and notification has been published. As argued, it was open for the petitioner to raise objections at that stage, however no such objection has been raised hence it shall not be open to the petitioner now to agitate the question before this

court. In my view, this contention has no force in law since the petitioner has already challenged the impugned order and, if the order cannot be sustained in the eyes of law, the consequential steps taken also would not remain sustainable in the eyes of law.

6. In light of the aforesaid facts and circumstances, this petition is allowed. The order at Annexure-A dated 30.10.1985 passed by the Competent Authority and the order at Annexure-C dated 30.11.1996 passed by the Tribunal are hereby quashed and set aside. The matter is remanded to the Competent Authority to decide Form No.1 in accordance with law preferably within a period of four months from the date of receipt of writ from this court. It would be open for the petitioner to raise all contentions available under law. The Competent Authority shall decide the same on merits while deciding Form No.1 and shall not be influenced by the order passed by this court. Petition stands disposed of. Rule is accordingly made absolute with no order as to costs.

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